UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, APRIL MUÑIZ, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, JOHN DOE, and THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE DEFENDANTS FROM INTRODUCING COLLATERAL SOURCE EVIDENCE

Plaintiffs respectfully submit this Motion *in Limine* to preclude Defendants from offering evidence about, or otherwise referencing, any collateral source funds that Plaintiffs have received or may receive in the future.

BACKGROUND

Plaintiffs seek to hold Defendants—several white supremacist and Neo-Nazi organizations, their leaders, members, and co-conspirators—accountable for the racially-motivated violence they planned and helped execute in Charlottesville, Virginia on August 11 and 12, 2017. As a result of Defendants' acts, Plaintiffs suffered severe physical, mental, and emotional injuries, as well as financial losses. To help offset those damages, certain Plaintiffs have received compensation, reimbursement, donations, or other funds from a variety of collateral sources, including, but not limited to: health insurance, workers' compensation programs, and gifts from third-parties, including donations through online, crowd-funded campaigns. Based on the fact that some Defendants asked about certain Plaintiffs' receipt of collateral source funds in discovery,

Plaintiffs anticipate that Defendants may seek to introduce evidence relating to those collateral funds.

ARGUMENT

Under the collateral source rule, "'compensation from a collateral source should be disregarded in assessing tort damages.'" *Sloas v. CSX Transp., Inc.*, 616 F.3d 380, 389 (4th Cir. 2010) (quoting *United States v. Price*, 288 F.2d 448, 449–50 (4th Cir. 1961)). The central purpose of the rule is to ensure that a wrongdoer does not benefit because a victim's losses have been compensated, in whole or part, "by some other party." *ML Healthcare Servs., LLC v. Publix Super Mkts., Inc.*, 881 F.3d 1293, 1303 (11th Cir. 2018); *see also Scarborough v. Atl. Coast Line R. Co.*, 190 F.2d 935, 940 (4th Cir. 1951); *Schickling v. Aspinall*, 369 S.E.2d 172, 174 (Va. 1988); Restatement (Second) of Torts § 920A(2) (1979). Equally important, the rule also guards against perversely transforming a donation or gratuity intended to help a victim into a benefit to "the injurer instead." *Szedlock v. Tenet*, 139 F. Supp. 2d 725, 736 (E.D. Va. 2001), *aff'd*, 61 F. App'x 88 (4th Cir. 2003). To achieve those purposes, the rule prohibits a defendant from attempting to evade liability or reduce damages based on the "fact that [a] plaintiff may receive"—or has already received—"compensation from a collateral source (or free medical care)." *Scarborough*, 190 F.2d at 940; *see* Restatement (Second) of Torts, § 920A cmt. b.

As an initial matter, there can be no doubt that the collateral source rule applies to Plaintiffs' claims here. Indeed, Virginia has recognized and applied the rule for almost 150 years. *See Schickling*, 369 S.E.2d at 174; *Acordia of Va. Ins. Agency, Inc. v. Genito Glenn, L.P.*, 560 S.E.2d 246, 251 (Va. 2002). Federal courts, too, have long recognized and applied the rule to claims arising under federal law—including, as relevant here, claims brought under federal civil rights laws. *See, e.g., Eichel v. N.Y. Cent. R. Co.*, 375 U.S. 253, 253, 255 (1963) (applying the rule to claims brought under a federal statute); *Riffey v. K-VA-T Food Stores, Inc.*, 284 F. Supp. 2d 396,

396–97 (W.D. Va. 2003) (federal anti-discrimination statutes); *Danner v. Int'l Freight Sys. of Wash., LLC*, 855 F. Supp. 2d 433, 437, 475 (D. Md. 2012) (federal torts); *Doe v. Darien Bd. of Educ.*, No. 3:11-cv-1581, 2015 U.S. Dist. LEXIS 158261, at *5–6 (D. Conn. Nov. 24, 2015) (federal civil rights statute).[1]

Under both Virginia and federal law, the collateral source rule sweeps broadly. It covers a wide array of sources, including private insurance, employment benefits, government programs, gratuities, and gifts from third persons, including donations made online. *See* Restatement (Second) of Torts § 920A cmts. b, c (1979) (listing categories, including insurance, employment and government benefits, and gifts); *see also Acordia*, 560 S.E.2d at 251 (citing same); *Rayfield v. Lawrence*, 253 F.2d 209, 214 (4th Cir. 1958) (medical services "paid for by a third person as a gift"); *Stokes v. City of Visalia*, No. 1:17-CV-01350-SAB, 2018 WL 1116548, at *6 (E.D. Cal. Feb. 26, 2018) (donations made through a "Go Fund Me page."). Applied here, the collateral source rule prohibits Defendants from offering evidence about—or otherwise referencing—any insurance proceeds, compensation, reimbursement, or gifts that Plaintiffs have received or may receive from third parties. To hold otherwise would undermine the policies underlying the rule by permitting Defendants to benefit from the acts of generous third parties who intended to help the victims, not the injurers. *Cf. Szedlock*, 139 F. Supp. 2d at 736.

The Federal Rules of Evidence compel the same straightforward result. *See Riddle v. Exxon Transp. Co.*, 563 F.2d 1103, 1107 (4th Cir. 1977) ("Nothing in the . . . Federal Rules of Evidence authorizes departure from the [collateral source] rule."). For starters, collateral source evidence is not relevant to a "fact [that] is of consequence in determining the action," Fed. R. Evid. 401, and

[1] Because Virginia and federal law are consistent on the application of the collateral source rule, this Court may rely on state law to the extent "necessary to furnish suitable remedies" for Plaintiffs' federal claims. *See* 42 U.S.C. § 1988(a).

must therefore be precluded under Federal Rule of Evidence 402. *See Phillips v. W. Co. of N. Am.*, 953 F.2d 923, 930 (5th Cir. 1992) ("[E]vidence of collateral benefits simply has no relevance. . . ."); *accord Reed v. E.I. du Pont de Nemours & Co.*, 109 F. Supp. 2d 459, 465 (S.D. W. Va. 2000). Moreover, even if collateral source evidence were somehow relevant, it would be inadmissible under Rule 403 because introducing such evidence would present a "substantial likelihood of prejudicial impact" that "clearly outweighs" any probative value it might have. *Eichel*, 375 U.S. at 255. Indeed, as many courts have explained, evidence that a plaintiff has already received some recompense for her injuries might cause the jury to believe that an award of damages would overcompensate her and thus lead the jury to reduce its damages award. *See Phillips*, 953 F.2d at 929–30; *Brooks v. Cook*, 938 F.2d 1048, 1052 (9th Cir. 1991). To avoid that unjust result, courts in the Fourth Circuit adopt a "strong policy" in favor of excluding collateral source evidence. *Hawkins v. United Overseas Exp. Lines, Inc.*, 490 F. Supp. 138, 142 (D. Md. 1980); *see also, e.g.*, *Reed v. Dep't of Corr.*, 7:13-CV-00543, 2014 U.S. Dist. LEXIS 157822, at *5 (W.D. Va. Nov. 7, 2014) ("[C]ourts often decline to reduce a plaintiff's . . . award by benefits received from another source . . . ."). That strong policy, which is consistent with the collateral source rule, is dispositive here: as a matter of law, Defendants may not introduce or reference any collateral source evidence.[2]

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' Motion *in Limine* and preclude Defendants from offering evidence relating to, or otherwise referencing, collateral source funds that Plaintiffs have received or may receive in the future.

[2] The strong presumption against collateral source evidence applies even when the evidence is purportedly being offered "for purposes not directly related to the [collateral] payments themselves," such as to show "the extent and duration of [a] plaintiff's injury." *Hawkins*, 490 F. Supp. at 141–42 (collecting cases).

Dated: October 4, 2021

Respectfully submitted,

/s/ Jessica Phillips

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CERTIFICATE OF SERVICE

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